

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

First Appeal No. 99 of 1991

Maharashtra State Road Transport Corporation ..Appellant

vs.

Smt.Ashalata Bhalchandra Bhosle
w/o Bhalchandra Nivrutti Bhosle
Hindu, Adult, Aged 35 years,

1. Meghdoot, son, aged 35 years
2. Hemlata, daughter, aged 15 years
3. Seema, daughter, aged 12 years
4. Mahesh, son, aged 10 years
5. Kailash, son, aged 7 years ..Respondents

Shri G.S.Hegade with Shri C.M.Lokesh for appellant.
Shri S.M.Oak for respondents.

CORAM: S.B.MHASE J.
17th August, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the parties.
2. This appeal is directed against the judgment and award passed by Motor Accident Claims Tribunal, Thane on 21st June, 1988 in Motor Accident Claim No.308 of 1984. The appellant herein is the original opponent no.1 and is the owner of Asiad Bus bearing No.MT0-8031. The respondents are the wife and children of deceased Bhalchandra Nivrutti Bhosale who expired in the motor accident which took place on 22nd March, 1984 on Sion Panvel Highway near Mile Stone No.125/600. Deceased Bhalchandra was at the time of accident driving

scooter bearing No.MXY 2114. Since in the said accident Bhalchandra, husband of Ashalata and father of rest of the respondents, died on 31st March, 1984 in a Hospital after the accident dated 22nd March, 1984, the claim petition under sec.110A of the Motor Vehicles Act, 1939 was filed claiming compensation of Rs.2,50,000/- from the appellant/original opponent no.1 and one Shri Shivaji Appa Gaikwad, driver of the said Asiad Bus.

3. On 22nd March, 1984 Asiad bus bearing No.MTO-8031, owned by the appellant and driven by Shri Shivaji Gaikwad, driver, employed by the appellant, was going from Bombay to Pune. At about 5.30 p.m. the bus came near the Mile Stone 125/600, a place generally known as Uran bypass, on Sion Panvel Highway. At that time the deceased Bhalchandra was coming on his Vijay scooter bearing MXY-2114 from Konkan Bhavan towards his factory and from opposite direction of the bus the deceased was on his left side. Along with the deceased his minor son Mahesh was the pillion rider. The deceased was driving the scooter on a left side of the road and the bus driven by Shivaji Gaikwad bearing No.MTO-8031 dashed against him as a result of which the deceased sustained injuries so also

his son Mahesh sustained injuries. After the accident the deceased and his son were admitted in Sion Hospital, however, the son was given discharge after 2-3 days but the deceased Bhalchandra died in Sion Hospital while taking treatment on 31st March, 1984. Since the deceased had died in motor accident which was driven rashly and negligently by the driver of the appellant the above referred claim petition was filed by the wife initially. However, when it was found that the deceased has left 5 children, the Claims Tribunal directed these children to be added as parties and thereafter his passed the enforceable award. The Tribunal by order dated 21st June, 1988 directed the appellant to pay the compensation of Rs.2,50,000/- including Rs.15,000/- already paid with cost and further interest at the rate of 12% p.a. from the date of application i.e. from 21st September, 1984 till the date of payment of the award amount to the applicants. The said award is challenged by the appellant.

4. The learned counsel Shri Hegade appearing for the appellant submitted that the Claims Tribunal has committed an error in holding that the accident had taken place because of the rash and negligent driving of the driver Gaikwad. He submitted that

at the relevant time of accident at the spot one truck was standing and a signal was given to the driver of Asiad bus to over take the said truck and while standing truck was being overtaken by the driver of the appellant, the appellant has gone to the right side of the road. However, beyond the Asiad bus in question there was a tar (pucca) road and beyond that there was a katcha road and, therefore, according to the learned Counsel the deceased should have made efforts to avoid the accident by taking his scooter to the katcha road. He further submitted that at the place of the accident the road was in ascending position from Sion to Panvel direction and as against that on the reverse direction i.e. from Panvel to Sion it is in descending position. Therefore, deceased Bhalchandra who was coming from the said road on descending way was driving the scooter with high speed. As against that the Asiad bus was on ascending road and its speed was slow. Ultimately he submitted that the accident had taken place due to rash and negligent driving of the deceased Bhalchandra namely scooter bearing MXY 2114. He further submitted that in any eventuality it is a case of contributory negligence and, therefore, the Claims Tribunal committed an error in placing complete liability of accident on the appellant.

5. The Claims Tribunal after scanning the evidence has come to the conclusion that the accident has taken place due to rash and negligent driving of the driver of the appellant, namely, the driver of Asiad bus bearing No.MT0-8031. In the present matter the respondents have examined Ashalata. However, the said Ashalata is not having personal knowledge of the manner in which the accident had taken place. She went to the site of the accident after the accident and had seen that the scooter of the deceased Bhalchandra was lying on the road and as against that her son and husband were admitted in hospital. So on the point as to how the accident had taken place the evidence of Ashalata is of no help. However, the First Information Report has been lodged on the basis of the report lodged by the driver of the appellant. From that F.I.R. (Exh.31) it is revealed that on the day of accident at about 5.30 p.m.the bus was going towards Panvel by Sion Panvel highway and when it came to Uran bypass there was one truck ahead of the said Asiad. The said truck driver gave a signal to Asiad bus driver while the scooter driven by the deceased was coming from opposite direction. Since the side was given the Asiad bus driver was overtaking the said truck. At that point of time

the accident had taken place in which Asiad bus dashed to the scooter. Thus from the F.I.R. it is revealed that the accident has taken place while the Asiad bus driver was overtaking the truck. It is interesting to note that in the present matter the appellant has examined the said driver Shivaji Gaikwad at Exh.35. The said witness of the appellant has stated that when the bus reached near Uran phata one truck was parked in a stationary condition. Therefore, he slowed down the speed of the bus and brought the bus in the second gear. There was ascending portion in front of him and there was a curve and, therefore, bus was taken in second gear and since there was a parked truck in front of the driver, front vision of the driver was blocked. He passed that truck and then immediately noticed one scooter coming from opposite direction at the corner of the road. Since there was a slope on the opposite direction and the scooter was coming in high speed the driver of the bus halted the bus. The scooter driver did not apply the brake and came in high speed and gave dash on the right side bumper of the bus. Thus what this Court finds is that the story which is revealed in F.I.R. is slightly modified by the said driver. In the F.I.R. it is stated that the truck was going on in front of the Asiad bus, however, in his statement

before the Court it is stated that the truck was stationary and while in stationary position the truck driver gave a signal to overtake. This improvement though appears to be very minor one but it is very vital one because in order to overtake a running truck a vehicle which desires to overtake like Asiad bus will have to increase the speed more than the truck and, therefore, in order to show that the Asiad bus was slow the possible improvement was introduced that the truck was stationary and stationary truck was being overtaken. Therefore, this is material contradiction. The fact, therefore, remains that first information report shows that Asiad bus driver was overtaking the running truck which was ahead of the Asiad bus and, therefore, the speed of the bus must have been more than the truck in question. Apart from that when the driver of Asiad bus is overtaking the truck when the road is in ascending position the driver will have to increase the speed and, therefore, statement made by the said witness Exh.35 is not acceptable and believable statement that he slowed down the bus and then tried to overtake the truck. Thus from the panchanama it will be revealed that Asiad bus has gone to the extreme right side of it. The width of the road is 24 feet while the side margin

is of 5 feet. The truck has come at the spot. The only tar (pucca) Road left out was to the extent of 2 feet. Thus the Asiad bus has gone to the extreme right side practically leaving no scope for the scooter driver namely Bhalchandra to pass on the said Asiad bus. The submission of the learned Counsel that the deceased Bhalchandra should have taken his scooter to the Katcha Road in order to avoid the accident is further not acceptable in the facts of the case that it has come in evidence that at the place of accident the truck in question was already overtaken and thereafter 200 feet ahead of the truck the accident had taken place. Thus it is clear that after the truck was overtaken there was a chance for the Asiad driver of the appellant to take the Asiad bus again to the left side. It is not the case of the appellant's driver that on the left side there was some vehicle and it was not possible for him to take Asiad bus to the left side. Therefore, the best possible opportunity was available to the driver of the appellant by taking the Asiad bus to the left side of the road after the act of overtaking the truck is completed. However, since that has not been done Asiad bus has dashed as against the scooter which was coming in opposite direction and deceased had suffered the injuries to which unfortunately he subsequently

succumbed to death. Analysis of all this material, namely, F.I.R., panchanama and the statement of the driver of Asiad bus of the appellant coupled with the stand taken in the written statement of the appellant discloses that it was the driver of the appellant, namely the driver of Asiad bus bearing No.MT0-8031 was negligent in driving the said vehicle and because of his rash and negligent act the accident in question had taken place. This Court finds that the analysis of the evidence carried out by the Claims Tribunal holding that the driver of the appellant is rash and negligent in driving the vehicle and, therefore, responsible for the accident is just and proper and this Court agrees with the said finding.

6. The next question which is raised by the learned Counsel for the appellant Shri Hegade is that, according to him, the claims Tribunal has committed an error in accepting the multiplier of 18. He submitted that the age of the deceased was 40 years at the relevant time and, therefore, it was improper to take the multiplier of 18. The learned Counsel submitted relying upon **2005(4) Supreme 87 in the matter of Tamil Nadu State Transport Corporation Ltd. Vs.S.Rajapriya and others** that in similar situation the Apex Court has

applied the multiplier of 12 instead of 16 and has calculated the compensation. Therefore, the learned Counsel submitted that in the same way this Court shall apply the multiplier of 12 instead of 18 and calculate the compensation. The learned Counsel for the respondent submitted that it would be unjust to accept the multiplier of 12 in the facts and circumstances of the present case. He submitted that multiplier of 12 was accepted by the Apex Court in the above referred judgment in the facts and circumstances of the said case. The learned Counsel for the respondents submitted that the cases which have been referred to by the Apex Court in the said judgment did point out that while fixing the multiplier several points are required to be taken into consideration as detailed and referred to in the said judgment and, therefore, he submitted that here the age of the deceased should not be taken only one criterion for fixing the multiplier. The learned Counsel for the respondents insisted that ages of the dependents be also taken into consideration. He submitted that the youngest son Kailash of the deceased was of 7 years at the time of accident and, therefore, the dependents were more in number than the dependents who were available in the reported judgment. He further submitted that it is not known as to what

was the work the deceased in the reported judgment was doing so as to ascertain the financial capacity. Therefore, he submitted that the test as laid down in the said judgment cannot be applied here, however, the multiplier which was applied taking into consideration the age of the deceased and other circumstances reflected from the said judgment cannot be applied. According to him, the multiplier has to be fixed taking into consideration the facts and circumstances of each case.

7. In the judgment referred to above the deceased was of 38 years of age and he died in automobile accident. He had a widow and minor son. Thus the dependents were only two and as to what work the deceased was doing is not reflected in the said judgment. Only age is reflected. Taking recourse to various earlier judgments of the Apex Court it is observed in para 17 as under:

"In Susamma Thomas's case (supra) it was noted that the normal rate of interest was about 10% and accordingly the multiplier was worked out. As the interest rate is on the decline, the multiplier has to consequentially be raised. Therefore,

instead of 16 the multiplier of 18 as was adopted in Trilok Chandra's case (supra) appears to be appropriate. In fact in Trilok Chandra's case (supra), after reference to Second Schedule to the Act, it was noticed that the same suffers from many defects. It was pointed out that the same is to serve as a guide, but cannot be said to be invariable ready reckoner. However, the appropriate highest multiplier was held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian Citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age."

Thus it will reveal that a test for adopting the multiplier has been demonstrated by the Apex Court. Taking over all view of the matter I am in agreement with the learned Counsel for the appellant to the extent that the multiplier as accepted by the Claims Tribunals namely of 18 is not appropriate. However, what should be the correct multiplier in the facts and circumstances of the case is the question to be considered. In

the background this Court would like to emphasis that the age is not the only factor to be considered while a multiplier is to be accepted. In the present matter the minor children were 5 apart from the wife of the deceased and, therefore, the liability was higher one on the deceased. Therefore, what this Court finds that it will be improper to accept the multiplier of 12. Taking into consideration the facts of the present case and relying upon various tests which have been referred to by the Apex Court in the above referred judgment making a reference to the earlier judgment of the Supreme Court this Court finds that multiplier of 14 will be appropriate in the facts and circumstances of the case.

8. The Claims Tribunal has evaluated the dependency to Rs.1,424/- taking into consideration the monthly income of the deceased being Rs.2137.10 and thus the yearly dependency is Rs.17,088/- and, therefore, the compensation which the respondents are entitled to get would be Rs.2,39,132/- Apart from this amount of compensation the respondents are entitled to Rs.5,000/- by way of loss of consortium and Rs.5000/- for the damages for pain and sufferings of the deceased from 22nd March, 1984 to 31st March, 1984. The respondents are

further entitled for nominal damages of Rs.5000/- on account of shortening of life etc. Thus, the total compensation for which the respondents are entitled is $\text{Rs.}2,39,132 + \text{Rs.}15,000 = \text{Rs.}2,54,132$.

9. It is to be noted that the Claims Tribunal has earlier evaluated the compensation to Rs.3,22,584/- and from the said amount Rs.30,000/- which was received by way of insurance were deducted. Not only that Rs.13,326/- was also deducted by way of premium which was paid by the deceased by way of premium. However, at the bar it is accepted that these deductions were wrong and erroneous. It is also well established position now in law that the amount of insurance which has been received by the heirs of the deceased whatever deducted from the amount of compensation is to be paid under the motor accident because those payments are accelerated payments as a result of early death of the deceased and they are being paid as a result of contributions made by the deceased towards the insurance scheme. A reference can be made for this purpose to the judgment of the Supreme Court in the matter of **Helen C.Rebello and others Vs.Maharashtra State Road Transport Corporation and another** reported in 1999 ACJ 10.

10. Thus, this Court finds that the respondents are entitled to get the compensation of Rs.2,39,132/- + Rs.15,000/- However, the claim of the respondents is only limited to Rs.2,50,000/- It is interesting to note that even the Claims Tribunal has come to the conclusion that the respondents are entitled to Rs.2,63,326/- yet the award passed is of Rs.2,50,000/- since the claims petition is for the said amount. Therefore, this Court also finds that even though the respondents are entitled for Rs.2,54,132/-, the decree as passed by the Claims Tribunal granting the amount of Rs.2,50,000/- including Rs.15,000/- already paid needs no interference and it stands as correct, just and proper.

11. It requires to be stated that during the pendency the amount of compensation has been deposited on 8th March, 1989 though withdrawal is at the later stage. Since the said amount has been deposited immediately the question of interest does not require any interference. The learned Counsel for the appellant tried to state that interest at the rate of 9% be granted. But this Court is not in agreement with the learned Counsel. In the year 1984 or in the year 1988 when the Award was passed the interest rate on deposits by the Banks was 12%

for a long term deposit and, therefore, interest which is granted by the Claims Tribunal namely 12% p.a. is just and proper and no interference is called for.

12. Thus, on ultimate result though the submission of the learned Counsel for the appellant has been accepted to some extent on the point of multiplier to be applied in the facts and circumstances of the case, in the final award there would not be any change and, therefore, there is no other alternative but to dismiss the appeal. The appeal is hereby dismissed.

(S.B.MHASE J.)